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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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JOSE A. ESPINOSA-SUSANA,

Petitioner,

**DECISION AND ORDER**  
05-CV-731S

-v-

UNITED STATES MARSHALS,

Respondent.

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Petitioner Jose A. Espinosa-Susana, has filed a petition for habeas corpus relief, pursuant to 28 U.S.C. § 2241, claiming that he is being unlawfully and unjustly detained by the United States Marshal at the Buffalo Federal Detention Facility pursuant to a “pretended” arrest warrant issued by District Judge Aida Delgado of the United States District Court for the District of Puerto Rico. (Docket No. 1). Petitioner has also filed an application to proceed *in forma pauperis*. (Docket No. 2).

Petitioner claims that he appeared before District Judge Delgado in Puerto Rico on September 25, 2004, and was transferred to the Buffalo Federal Detention Facility on October 23, 2004, but has not appeared before a Judge of this Court nor been assigned counsel since his transfer to this District.<sup>1</sup> Subsequent to the filing of the instant Petition, Petitioner appeared before United States Magistrate Judge Leslie G. Foschio and was ordered released subject to certain conditions including the filing of an appearance bond. (*U.S. v. Espinosa*, 02-CR-200S-5). Petitioner filed the bond on November 10, 2005.

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<sup>1</sup>The criminal docket sheet in *United States v. Jose Espinosa, a/k/a Mahito*, 02-CR-0200S-05, indicates that an indictment was filed in this Court against “Jose Espinosa”, and others, on October 3, 2002, and that an arrest warrant was issued for Jose Espinosa on that same date. An arrest warrant was returned as executed as to Jose Espinosa on October 17, 2004, which was not filed in this Court until October 17, 2005. (Docket No. 80).

Based on Petitioner's initial appearance before Magistrate Judge Foschio and his pre-trial release, it appears to the Court that Petitioner has been accorded the relief requested in the Petition and that the Petition is therefore moot. Prior to dismissing the Petition, however, the Court will afford Petitioner the opportunity to address whether the Petition should be dismissed. Accordingly,

IT HEREBY IS ORDERED as follows:

1. Petitioner's request to proceed as a poor person is granted.
2. Within **ten (10) days** of the receipt of this Order, Petitioner shall file a response to this Order addressing why the petition should not be dismissed as moot.
3. If the Petitioner does not file a response to this Order within **ten (10) days** of receipt of this Order, the Clerk of the Court is directed to dismiss the petition without further notice.
4. The Clerk of Court shall serve a copy of the Petition, together with a copy of this Order, by certified mail, upon respondent and upon the United States Attorney for the Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202.
5. Respondent shall file a reply to Petitioner's response to this Order within **ten (10) days** of receipt of Petitioner's response.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND CORRESPONDENCE TO THE UNITED STATES ATTORNEY FOR THE WESTERN DISTRICT OF NEW YORK, 138 DELAWARE AVENUE, BUFFALO, NEW YORK 14202.**

SO ORDERED.

Dated: November 16, 2005  
Buffalo, New York

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/s/William M. Skretny  
WILLIAM M. SKRETNY  
United States District Judge